

REMARKS

At the outset, Applicant thanks the Examiner for the telephone interview on February 22, 2008.

Status of the Claims

The pending Office Action addresses claims 1-25, however claims 7-10 and 20-21 are withdrawn from consideration. Remaining claims 1-6, 11-19, and 22-25 stand rejected.

Amendments to the Claims

Claims 2 and 3 are cancelled. Applicant amends independent claim 1 to include recitations in now-cancelled claims 2 and 3. Claim 1 is also amended to correct a typographical error and to recite that the top and bottom portions of the clamp member include inferior and superior surfaces, respectively, that extend from the recess to the first end and that taper away from one another toward the first end along an entire length thereof. Support for this amendment can be found throughout the specification, for example in paragraph [0048]. Independent claim 23 is amended similarly to claim 1. Dependent claim 4 and withdrawn dependent claims 7-10 are amended to provide correct dependencies and/or antecedent bases in light of other claim amendments. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 103

Claims 1-6, 11-18, and 22-25 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,620,533 ("Mears") in view of U.S. Patent No. 6,413,257 ("Lin"). Claims 1-6, 11-19, and 22-25 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,277,119 ("Walulik") in view of Lin.

Independent claim 1 recites, in part, a clamp member having top and bottom portions with a recess formed there between. The top and bottom portions include first and second ends, and the second ends are connected to one another such that the top and bottom portions are movable between an open position in which the top and bottom portions are spaced a distance apart from one another, and a closed position in which the clamp member is adapted to engage a spinal fixation

element disposed within the recess. The top and bottom portions also include inferior and superior surfaces, respectively, that extend from the recess to the first end and that taper away from one another toward the first end along an entire length thereof. Independent claim 23 recites, in part, a clamp member having top and bottom portions with first and second terminal ends. The top and bottom portions are connected to one another at the second terminal end thereof such that the top and bottom portions are movable between an open position and a closed position. A recess is formed between an inferior surface of the top portion of the clamp member and a superior surface of the bottom portion of the clamp member. Similar to claim 1, the inferior surface of the top portion and the superior surface of the bottom portion taper away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end.

Mears and Walulik both fail to teach a top portion inferior surface and a bottom portion superior surface (i.e., inner surfaces) that taper in any direction, much less that taper away from each other along the entire length thereof from a recess formed between the top and bottom portions at one end of the clamp member to an opposite end of the clamp member. Lin teaches tapering inner surfaces, namely a slot (28) of a leg portion (16) of a connector (10) that extends between a first end (30) intersecting a bore (18) and a second end (32), and that tapers from a smaller width at the first end (30) to a larger width at the second end (32). (See Lin FIG. 7 and Col. 4, lines 3-5.) However, no person having ordinary skill in the art would modify either Mears or Walulik in view of Lin to arrive at the claimed invention.

The strongest rationale for combining references is a recognition that some advantage of expected beneficial result would be produced by the combination. (See MPEP §2144). There is no advantage to modifying the clamp of Mears or the clamp of Walulik such that, as generally recited in independent claims 1 and 23, the top and bottom portions include inferior and superior surfaces, respectively, that taper away from one another along the entire length from a recess at one end of the clamp to the other end of the clamp. To the contrary, combining Mears or Walulik with Lin would result in non-functioning clamps.

For illustration purposes, FIG. 1 below shows a generalized example of Walulik's clamp *modified* to have tapered inner surfaces in an open position, and FIG. 2 below shows the clamp of

FIG. 1 in a closed position. As can be seen in FIG. 2, if the inner surfaces of the clamp are tapered, this will cause the outer surfaces to extend at an angle relative to one another when the clamp closed. Such a configuration would cause the apertures to be misaligned, as shown, thus preventing a fastener from being inserted through the apertures to close the clamp. Furthermore, such a configuration would prevent the fastener from aligning with a corresponding component, as specifically required by Walulik. As explained at Col. 4, lines 17-23, 52-54 of Walulik, a threaded end (74) of the fastener (64) is specifically configuration to engage an internally threaded aperture of a cooperating component to *draw two components together* and secure the clamp (22), with a serrated portion of the fastener (64) also engaging a corresponding serrated portion (72) of the first end (76).

Figure 1

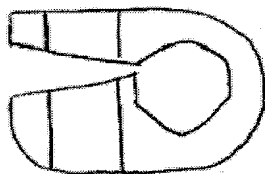


Figure 2

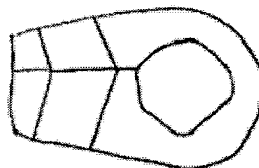
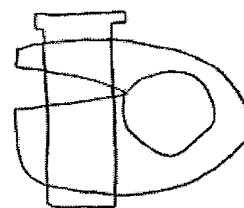


FIG. 3 further illustrates the clamp of Walulik *modified* to have tapering inner surfaces, showing a fastener inserted through the bores to close the fastener. As shown, the fastener would only be able to partially close the fastener. Once the inner surfaces near the recess touch, the clamp cannot further move. Secure clamping is thus not provided because the ends of the clamp opposite the recess do not and cannot touch because the fastener prevents any movement of the first and second ends other than parallel to each other.

Figure 3



Accordingly, no person having ordinary skill in the art would modify Walulik in view of Lin.

The analysis above regarding Walulik in view of Lin similarly applies to Mears in view of Lin, and thus no person having ordinary skill in the art would modify Mears in view of Lin. Like

Walulik, modifying Mears to have tapered inner surfaces would render Mears' clamp unusable because if tapered inner surfaces were added, a fastener could not be inserted through the bores in the clamp in a fully closed position as shown in FIG. 2 above, or if a fastener is used it would not fully close the clamp as shown in FIG. 3 above. Moreover, the clamp would not properly align with adjacent components, as specifically intended, thus preventing a secure connection from being formed between the two components (20, 21).

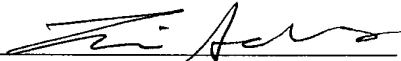
Claims 1 and 23, as well as claims 4-6, 11-19, 22, and 24-25 which depend therefrom, therefore distinguish over Walulik, Mears, and Lin and represent allowable subject matter.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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